**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN**

**FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929**

**WP(C).No. 4488 of 2004(H)**
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**PETITIONER:**
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**M.G.GOURI,**
**RETIRED HEADMISTRESS, A.M.L.P. SCHOOL,**
**KARUKATHIRUTHY, P.O. PONNANI, MALAPPURAM.**

**BY ADV. SRI.K.JAJU BABU,**
**SMT.M.U.VIJAYALAKSHMI.**

**RESPONDENTS:**
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1. **STATE OF KERALA,**
   **REPRESENTED BY SECRETARY TO GOVERNMENT,**
   **GENERAL EDUCATION DEPARTMENT, GOVT.SECRETARIAT,**
   **TRIVANDRUM.**

2. **THE DIRECTOR OF PUBLIC INSTRUCTION,**
   **TRIVANDRUM.**

3. **THE DEPUTY DIRECTOR OF EDUCATION,**
   **MALAPPURAM.**

4. **THE ASST.EDUCATIONAL OFFICER,**
   **PONNANI.**

5. **THE ACCOUNTANT GENERAL (A & E),**
   **KERALA, TRIVANDRUM.**

**BY GOVT. PLEADER SMT. SMITHA SUKUMARAN.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.(C). NO.4488/2004:**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P.1: COPY OF THE OBJECTION VIDE LR. NO. F4/650/92 DTD. 01/02/2002 OF THE R.3. ADDRESSED TO THE R.4.**

**EXT.P.2: COPY OF THE ORDER NO. L. DIS. 37998/2003/R3/DPI DTD. 20/06/2003 OF THE R.2.**

**EXT.P.3: COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT IN OCTOBER 2003.**

**EXT.P.4: COPY OF THE ORDER NO. 56188/B1/2003/G. EDN. DTD. 15/12/2003, ISSUED BY THE R.1.**

**EXT.P.5: COPY OF THE ORDER NO. P14/PENA/613/BM/02-03 DTD. 26/11/2002 OF THE R.5.**

**EXT.P.6: COPY OF THE ORDER NO. P14/PENA/613/BM/02-03 DTD. 25/06/2003 OF THE R.5.**

**RESPONDENT'S EXHIBITS: NIL.**

**//TRUE COPY//**

**P.S. TO JUDGE**

**prv.**

**THOTTATHIL B. RADHAKRISHNAN, J.**

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**WP(C).No.4488 OF 2004-H**

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Dated this the 13th day of July, 2007.

**JUDGMENT**

**" CR"**

Petitioner, an LPSA was unqualified to be promoted as a Headmistress when a vacancy of the Headmaster occurred in the School, though she was the senior most teacher. On 30-7-1991, she was temporarily promoted as Headmistress in terms of Rule 45C of Chapter XIV-A Kerala Education Rules. Admittedly, she acquired the test qualification only in June, 2002. This means, by the operation of sub-rule (2) of Rule 45C, she was entitled to be treated as a teacher promoted permanently as Headmistress from the date of acquisition of the test qualification. But reckoning 30-7-1991, the date of her temporary promotion under Rule 45C as the date of her

entry as Headmistress, she was granted a higher grade on 1-9-2001. She retired on 30-4-2002. Even before that, on 1-2-2002 Ext.P1 objection was raised to the grant of higher grade.

2. The short issue that arises for decision is as to whether on the aforesaid facts, was the petitioner entitled to a higher grade being granted on the basis of her promotion on 30-7-1991 temporarily as a Headmistress.

3. The learned counsel for the petitioner referred to the decision of this Court in **Radha v. Dy. Director, Education** [2004 (3) KLT 206] in support of the case.

4. Rule 45C in Chapter XIV-A KER is one made to ensure that no educational institution works without a Headmaster. Therefore, in a situation where there is no qualified teacher available for promotion as Headmaster in accordance with the provisions contained in Rules 44, 44A, 45,

45A and 45B in Chapter XIV-A, sub-rule (1) of Rule 45C commands that the senior most teacher on the staff of the school shall be promoted as Headmaster, temporarily. This temporary promotion continues to be under the gaze of sub-rule (2) of that Rule which provides that a teacher temporarily promoted under sub-rule (1) shall be replaced as soon as possible by the member of the service who becomes entitled to promotion under the Rules. Sub-rule (3) of Rule 45C provides that a teacher temporarily promoted under sub-rule (1) shall not be regarded a probationer in the higher category or be entitled by reason only of such promotion to any preferential claim to future promotion to such higher category. Sub-rule (4) provides that on any subsequent promotion to the higher category in accordance with the rules, such a person who had earlier been temporarily promoted as Headmaster in terms of Rule 45C, shall commence his probation only from the date of the subsequent promotion or from such earlier date as the appointing authority may determine without prejudice to the seniority of others. The pay of the promotee has to be fixed

under Rule 43A which provides that such a teacher shall be placed with an initial pay by fixing the initial pay in the higher scale of pay applying Rules 28A and 37 in Part I Kerala Service Rules. The aforesaid statutory provisions will show that a temporary promotee Headmaster under Rule 45C does not gain such service as a Headmaster that could be reckoned as regular service in the category of Headmaster and therefore, cannot be treated as having entered in the category of Headmaster on the date of promotion under Rule 45C. So much so, such a person cannot be treated as having stagnated in that category. Hence, any stagnation of the petitioner in the category of Headmaster could have been only from the date of acquisition of test qualification by her which admittedly was in June, 2002. Therefore, the objection in Ext.P1 stands.

5. The judgment in **Radha's** case (supra) lays down the principle that a teacher temporarily promoted under Rule 45C of Chapter XIV-A, as Headmaster, in the absence of a qualified teacher, is entitled to get the scale of pay attached to

the post of Headmaster. This is nothing but the effect of sub-rule (5) of Rule 45C, as already noticed above. Neither that rule nor the ratio in **Radha's** case authorizes the treatment of such a person as a regular hand for being considered to be stagnating in the category of Headmaster for being granted a higher grade.

6. Having regard to the question whether the petitioner is liable to refund any overdrawals on account of wrong fixation of higher grade, the issue is covered against the petitioner by the decision of the Division Bench of this Court in **Santhakumari v. State of Kerala**, 2005 (4) KLT 649. Hence, that contention also fails.

In the result, all the contentions raised in this writ petition are rejected. The objection in Ext.P1 is sustained. The writ petition is disposed of directing that the amounts to be recovered from the petitioner on the strength of Ext.P1 shall be worked out without imposing any interest thereon and the

balance outstanding from the amounts already detained shall be released to the petitioner within a period of three months from the date of receipt of a copy of this judgment.

Sd/-
**THOTTATHIL B. RADHAKRISHNAN,**
**JUDGE.**

Sha/-

-true copy-

P.S.to Judge.